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IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1977
No. 77-1285

TOWNSHIP OF MIDLAND, a Municipal Corporation in Midland County, Michigan and ROBERT B. CHATTERTON,
Appellants,

v.

MICHIGAN STATE BOUNDARY COMMISSION,
Appellee,

and

CITY OF MIDLAND et al,
Intervening Parties Appellee.

On Appeal From the Supreme Court of Michigan

BRIEF OPPOSING MOTIONS TO DISMISS OR AFFIRM

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TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE and CHASE MANOR FARMS, INC., a Michigan corporation and MARY ANN ODERMAN,

Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF NOVI, a municipal corporation,

Appellee,

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

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BRIEF OPPOSING MOTIONS TO DISMISS OR AFFIRM[1]

Introductory Statement

The Michigan Townships Association, concerned over the freewheeling sweep of the opinion below, has requested of undersigned counsel, Eugene F. Black, that he assist preparation of a brief opposing the motions to dismiss or affirm. That concern has deepened as township counsel, here and there throughout both peninsulas of Michigan, have learned that the

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[1] All references in this brief, to Section 9, are to 1970-amended §9 of Michigan's 1909 statute known as the Home Rule Cities Act (MCLA §§117.1 et seq, MSA 5.2088 et seq.).

Michigan Supreme Court opinion—underpinned as it is by discredited *Hunter v. Pittsburgh*, 207 U.S. 161—has already been accepted by the Appellee Michigan State Boundary Commission as having effective precedential standing; all with result that a growing number of invariably irrevocable Section 9 annexations are being steadily approved by the Commission.

The request came about when it was learned by the Michigan Townships Association that such counsel has been helping the attorney for his home Township of Port Huron with due opposition to another more outrageous annexation petition. The latter was filed in 1973 with the Appellee Boundary Commission by the City of Port Huron (population about 37,000, situated at the easternmost point of Michigan opposite Canada), and now is being stimulated into Section 9 action by the Midland Township decision (handed down on October 24, 1977) and by denial December 16, 1977 of Appellants' motion for rehearing (402 Mich 956).

The salutatory purpose of Division I of this reply is that of meeting the Attorney General's and City of Novi's effort to justify what they successfully urged upon the Michigan Supreme Court, that is, sled-length application to Section 9 of "the seemingly unconfined dicta of *Hunter* and kindred cases".[2] For the way that dicta was copied dispositively and repeatedly employed, we respectfully invite examination

---

[2]

What did *Hunter* actually hold, when it was written in 1907? Mr. Justice Frankfurter, writing for the Court in 1960 (*Gomillion v. Lightfoot*, 364 U.S. 339) answered with delightful specificity (pp. 342, 343):

> All that case held was (1) that there is no implied contract between a city and its residents that their taxes will be spent solely for the benefit of that city, and (2) that a citizen of one municipality is not deprived of property without due process of law by being subjected to increased tax burdens as a result of the consolidation of his city with another.

of 401 Mich. at 664, 665, 666, and again at 670 and 671, (Appellants affidavit, 83a, 84a, 85a, 89a, 90a, and 93a).

Division II will compare the purpose and impact of Section 9 with the Uninhabited Territory Act and the Annexation Act of California, considered as they were in the other notable decision cited below and here by Appellee Counsel, *Weber v. City Council of Thousand Oaks*, 109 Cal. Rep. 553, 513 P. 2d. 601 (1973).

Division III, headed "The Most Sinister Classifications," will speak to those classifications and unconstitutionality.

Division IV states that if *some* have the right to vote on annexation, *all* must, under the present state of the law.

Division V will establish jurisdiction of this Court, contrary to the Novi Brief.

ARGUMENT

I.

THE NUGATORY WORTH OF *HUNTER V. PITTSBURGH* AS PRECEDENT APPLICABLE TO THE EQUAL PROTECTION CLAUSE.

Point A

Syllabus 5 (Lawyers Edition) of *Humphrey's Executor v. United States* 295 U.S. 602 (1935), a decision presently considered with apt quotation, furnishes a compact beginning:

> "5. Expressions in a judicial opinion which are beyond the point involved do not come within the rule of stare decisis".

The specific thrust of this Point A is that of pointing to the evils of uncritical employment of precedents by lawyers and judges, and to the devastating consequences that practice has brought down upon the more than 1,000 unrepresented Michigan townships which, in view of this Midland Township Case, face invidiously unbridled annexation of selectively gerrymandered bits and progressively contiguous portions of their territories; solely upon authority of this newly conceived Michigan statute with its false fortification by *Hunter's* lengthy dicta.

Our premise is that the opinion below was buttressed exclusively upon the over-enthusiastic language that appears in *Hunter*, without any reference to or apparent knowledge of intervening *Gomillion* (*Gomillion v. Lightfoot*, 364 U.S. 339 [1967]), and without any treatment whatever of the principle that the burden of proving "a compelling state interest", in suffrage cases, rests heavily upon the enacting state and brought up for judicial scrutiny.

Gomillion cogently watered the stock of *Hunter* to its true value. Witness *Gomillion's* summary at 344, after extended examination of *Hunter*:

> Thus, a correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases is not that the State has plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations, but rather that of the State's authority is unrestrained by the particular prohibitions of the Constitution considered in those cases.

It is unfortunate that the Michigan Court did not refer to *Gomillion* and apparently from a review of the index of authorities, even though *Hunter* was referred to, no reference

was made to *Gomillion*. See pages 16-17 of the Michigan Supreme Court Brief of Attorney General that advances *Hunter* as controlling and makes no reference to *Gomillion*.

The warning expressed by *Gomillion* was, so far as we can learn, written first by Chief Justice Marshall when one of his own opinions, indicative language and all, was cited to this Court as controlling of *Marbury v. Madison*, 1 Cranch 137 (1803) *Humphrey's Executor v. United States*, 295 U.S. 602, chronicles the event (pp. 626, 627):

> A like situation was presented in the case of *Cohen v. Virginia*, 6 Wheat 264, 399, 5 L ed. 257, 290, in respect of certain general expressions in the opinion in *Marbury v. Madison*, 1 Cranch 137, 2 L ed. 60.
>
> "Chief Justice Marshall, who delivered the opinion in the *Marbury* case, speaking again for the court in the Cohen case, said:
>
> 'It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.'

Such a warning is by no means unknown in Michigan. When *Holcomb v. Bonnell*, 32 Mich. 6, came to submission in 1875, an earlier decision of the Court was cited as controlling but

found "open to an application much more extended than was designed unless strictly confined to the state of facts there shown." Our revered Cooley Court then proceeded with the same admonition (p. 8):

> It is hardly necessary to observe that the language used in deciding cases can rarely be separated from the specific matters contemplated by the court, without leading to results completely at variance with the principle with which the expressions were meant to harmonize. In laying down propositions which appear correct in view of the actual case as shaped by the record, *it is not generally considered needful to write down in guarded terms the particular limitations of the propositions or the conditions which would be read not as abstractions, but as propositions inseparably bound up with the particular issue and matters the court is then dealing with,* and it is in this way that the observations in the case mentioned must be considered, and without yielding to them any further than the needs of that case required."
>
> —Emphasis added.

Three years later the Michigan Supreme Court repeated the need for such vigilance in even stronger language (*Larzelere v. Starkweather,* 38 Mich. 96, 101, 135 N.W. 701). Next, and in 1971, *Larzelere's* warning repeated in big complete quotation in *Koschay v. Barnett Pontiac, Inc.,* 386 Mich. 223, 230, 231, 191 N.W. 2d 334.

Perhaps Mr. Justice Cardozo put all this at its best in his "Nature of the Judicial Process" (pp. 29, 30; Yale University Press, 1921):

> I own that it is a good deal of mystery to me how judges, of all persons in the world, should put their faith in dicta.

> *A brief experience on the bench was enough to reveal to me all sorts of cracks and crevices and loopholes in my own opinions when picked up a few months after delivery, and reread with due contrition. The persuasion that one's own infallibility is a myth leads by easy stages and with somewhat greater satisfaction to a refusal to ascribe infallibility to others.*
>
> —Emphasis Added.

If, as appellants claim, the 71-year-old opinion of *Hunter* may not be taken as barring their present appeal to the right of equal protection, then it is respectfully suggested that the emergent need for arrest of the Judgments below or, better yet, for an order directing remand for further consideration in the light of *Gomillion* and of the "compelling state interest" cases, has been fairly demonstrated. The suggested practice, "well established", for instances where a subsequent decision clearly calls for remand was pursued at the same term both as *W.M.C.A. v. Simon,* 370 U.S. 190 (1962) and *Scholle v. Hare,* 369 U.S. 429 (1963).

Both were notable suffrage cases. Both are well known to most counsel in the case at bar. Chief Justice Warren, in writing later for the Court in *Reynolds v. Sims,* 377 U.S. 533 (1964) at 557, noted the fact of each remand for the quoted purpose.

Scholle v. Hare and its equal protection impact upon all Michigan are well known to most counsel now at bar. The single result of remand there was reversal by the Michigan Supreme Court of its first judgment, effected by 1962 *Scholle v. Secretary of State,* 367 Mich. 176. No effort to review that 1962 judgment was made.

This case, whether affirmed, reversed or remanded, will affect township government of the people for years to come just as *Scholle* affected legislative districts far into the future.

The prime reason is that the electors of a township know for whom they have voted and are voting for or against as township candidates, and never hesitate to recall or discharge rascals when they turn out to be rascals.

Point B

Quite aside from the above, appellants respectfully insist that *Hunter*, on its face as it read, and now reads, never became an authority within the Equal Protection Clause.

No one of the several city counsel in these cases, having decided with the attorney general to employ that "unconfined dicta" against the Plaintiff-Appellants' claimed right of equal protection, could have read *Hunter* with due care. Otherwise he would have noted—and remarked in his writing—the visible fact that *Hunter's* appeal to this Court *assigned only the right of due process, and that no right of equal protection was before or considered by the Court.* Indeed, the phrase "equal protection" cannot be found anywhere in the opinion of *Hunter*, or in the then contentions and citations of counsel for appellants Hunter, et al. The latter appear with detail at pages 171, 172 and 173 of *Hunter's* report.[3]

There can be no reasoned question about this. Mr. Justice Moody, for the Court, epitomized the specific constitutional issue which gave rise to that long paragraph of *Hunter*, start-

[3]
Aside from the six other assignments of error that were "quickly disposed of" plus the one that alleged impairment of the obligation of a non-existent contract (p. 176).

ing on 177 and continuing through most of 178, which is the paragraph that includes the dicta adopted below. Said he (p. 177):

> Briefly stated, the assertion in the fourth assignment of error is that the Act of Assembly deprives the Plaintiffs in error of their property without due process of law, by subjecting it to the burden of the additional taxation which would result from the consolidation.

Hunter is silent on the question of the applicability of equal protection to annexation issues and voting rights on annexation simply because that issue was never raised or discussed by counsel before the Court.

NO OTHER UNITED STATES SUPREME COURT CASE WAS CITED BY THE MICHIGAN COURT IN THIS MATTER.

II.

THE WEBER CASE (109 Cal. Rep. 553, 513 P. 2d. 601 [1973]) AND THE STATUTORY SITUATION CONSIDERED THERE, COMPARED WITH SECTION 9'S UNIQUE METHOD OF BARRING THE RIGHT OF FRANCHISE OF TOWNSHIP VOTERS.

In *Weber*, citing 1971 *Gordon v. Lance* (403 U.S. 1), the Court relieved the defendant City Council from proving that requisite "compelling State interest" by holding that Mr. and Mrs. Weber did not, under the presented facts and statutory circumstances, constitute an aggrieved "identifiable class" (*Weber* at 607).[4]

[4]
All page references to *Weber*, except those designating the initial page of the official California Report, are taken from 513 P 2d.

No effort to review *Weber* was undertaken. The probable reason was that the California legislature spelled out a compelling state interest in specific and detailed language for their annexation legislation—a factor entirely lacking in the Michigan annexation law.

Now for that evidence. At 609 the Court noted that the 1939 Act was amended in 1945 to permit annexation "wherein less than three qualified electors reside;" that the Act was amended again [1947] to permit annexation "wherein less than 12 registered voters aside," and that the 1947 amendment was "given immediate effect as an urgency measure" in company with this formal legislative declaration of compelling necessity:

> The extreme shortage of housing in the State of California and the lack of a sufficient number of vacant lots within cities on which to build such housing has made it necessary to build outside of cities and in the fringe areas adjacent thereto. In order to provide such housing with the necessary sewage, sanitation and utility services, it is essential that such areas be permitted to annex to contiguous cities which would be able to extend existing municipal services to the annexed areas. The immediate adoption of this act will enable cities and areas adjacent thereto which desire to annex to such cities to provide police, fire protection, sewage and sanitation services to such housing as soon as constructed. (Stats. 1947, ch. 419, § 4, p. 1036.)

We represent that there is in Michigan no counterpart of this legislative finding and declaration, and that there never has been any compelling reason in our State for radical legislation, akin in any way to Section 9, save only that which has been generated by the covetous avarice of public as well as

private exploiters and developers of farming or sparsely settled areas. All the attorney general offers in such regard are his own unsworn and rather vagarious assumptions, such as (brief below at 23, 24):

> The legislature might have reasoned that an area having a population of 100 or less does not have a major effect on a community when it is annexed to a city and detached from a township, whereas an area having over 100 in population might have a major effect.

To these he has appended further notion that the legislature "might have reasoned that the orderly growth of home rule cities", or "the straightening of home rule city boundaries", should not "be prevented by such a small segment" or by "a group of people less than 100 in number" (motion to dismiss or affirm at page 10).

Repeating that the Michigan legislature has recorded no evidence of thought upon these fancies, we say they are invidiously wrong because Section 9 provides no limit on the number ("100 persons or less") of separate resolutions with accompanying petitions which a city may resolve and file, *simultaneously or by daily progression*, against the inhabitants of that marked-for-multilation nearby township. Hence we consider Section 9 wholly malignant in Fourteenth Amendment sense because it licenses elimination of *all voting in selected parts of the township*, just so long as each petition in succession is drawn so that it takes in less than 100 retract, by each step of the raid as planned.

If this sounds far-fetched, then we request that the Court consider all those 1977 and 1978 "100-or-less" annexation petitions that appear in Exhibit "K" (appendix 174a-181a). Not

just the big cities but even little ones like Imlay City, population 1,980, situated some 60 miles north of Detroit in the rich agricultural area known as Michigan's "Thumb", are hard at the game of progressive seizure of "100-or-Less" suburban or farming areas. Turning from that region to the remote and thinly populated Northern Peninsula, we find that the like little City of Munising, with Lake Superior on one side and square mile after square mile of forest land on the other, is out to capture a "100-or-less" big chunk of Munising Township (180a).

This isn't annexation that offends just "a small segment". It is step-by-step unilateral confiscation of tracts made contiguous by reprehensible practice which can and will deny invidiously the right to vote, of hundreds in each assailed township unless it is arrested pending enactment of a more sane and fair statute.

The above is not all of the comparative distinguishment *Weber* provides. By way of detailed conclusion, the *Weber* Court took pains to record the existence in California of sufficient judicial remedies and statutory inhibitions that are designed to frustrate rapacious and arbitrary annexations. Complete footnote 12, extending in fine print across nearly half of page 610, presents these safeguards in detail. Deserving special mention here, they protect against a species of domino downfall that is becoming favorite practice in Michigan. To quote Section 12's first example (*Weber* at 610):

> (1) Simultaneous 1939 Act proceedings to annex territories contiguous to each other, each of which contains fewer than 12 resident voters but which together contain more than 12, disqualifying the combined territories under the 1939 Act (*City of Anaheim* v *City of Fullerton*, [1951] 102 Cal. App. 2d 385, 403, 227 P 2d 494).

There is, in Michigan, no such protection of a township territory against non-voted annexation. City commissions stand free today, the Midland Township opinion and Section 9 considered, to plan and meet secretly for adoption of a succession of annexation resolutions aimed at an unsuspecting township, each describing a selected tract containing less than 100 residents and each near or adjacent to another, and for simultaneous signature of respective petitions addressed to the State Boundary Commission.

These separate but cooperative resolutions and petitions can be filed at once without knowledge of township inhabitants in general, or if its immediately threatened inhabitants, or of the township board. Once filed, the plenary jurisdiction of the Michigan Boundary Commission clamps like a beartrap[5] upon each tract thus designed for takeover, and the otherwise plenary right of access to the judicial system has been gratuitously restricted by the opinion below:

> No vested right or legally protected interest being involved [this had to be gleaned from *Hunter*], the judiciary ought to be especially circumspect in reviewing commission rulings and determinations.
>
> —*Midland Township v. Boundary Commission* 401 Mich. 641, 674 (1977).

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[5]
The Boundary Commission is even holding that, once a resolution and petition have been filed under Section 9, it cannot be withdrawn by consent and request of the involved city and township. Reference: "In re proposed annexation of territory in Shelby Township to city of Utica", Boundary Commission docket number 72-AR-24, ¶16, on page 4 of the commission's "Summary of Proceedings, Findings of Fact and Order", entered Feb. 8, 1974.

Some final comments upon *Weber* are pertinent.

First: The Court opened its address "to the merits of the petition"[6] by quoting the first two sentences of Hunter's sweeping dicta, which *Gomillion* had criticized (p. 605). No mention of *Gomillion* in that regard was made. The record shows that the California Court, having expounded the compelling State interest requirement at length, found and ruled that it had no application because Mr. and Mrs. Weber[7] did not constitute an "identifiable class" of electors, citing *Gordon v. Lance*, 403 U.S. 1 (1971), the ground assigned being that, the legislature having eliminated an "election" as such, there was no election in which Mr. and Mrs. Weber could participate.

Our deferentially submitted response to this is that such a conclusion cannot be reached until the statute said to have accomplished the elimination, has been found immune from constitutional attack. Furthermore, *Gordon v. Lance* is rather off the mark. There this Court definitely reviewed a straight-

---

[6]

In the *Midland* case, the obvious intent was for the City of Midland to annex land from Midland Township upon which Dow Chemical is building a multi-million dollar nuclear plant – a tax base for which the City of Midland is understandably covetous, since it is even a greater tax base than the conventional utility.

In Brighton, the obvious intent was to annex valuable shopping center property.

These two instances in this consolidated case, by way of examples but not limitation, *are* a *far* cry from *Weber*.

[7]

Mr. and Mrs. Weber were the only objectors to the annexation. The tract annexed consisted of 24.7 acres, of which 4.7 acres were owned and occupied by the Webers. The tract otherwise was totally uninhabited. In that down-to-2 setting the Court held that the Webers had not been denied equal protection by the annexation.

out election by ballot. The presented issue was defined with precision in the initial sentence of the Court's opinion (403 U.S. at 2):

> We granted certiorari to review a challenge to a 60% vote requirement to incur public debt as violative of the Fourteenth Amendment.

Second: Whatever one may think of *Weber's* application of the "no identifiable class" doctrine, in bar of otherwise entitled equal protection, that would seem quite inappropriate for consideration where (a) otherwise eligible voters are selectively reduced in number by a statute permitting the practice by means of successive resolutions and petitions, each aimed at taking a "100 or less" tract, as (b) other eligible voters, residing in a nearby small or large tract which for some reason—physical or geographic—cannot be divided and conquered, are by the same statute provided the right to vote by referendum.

Saying this, we repeat that Section 9 permits, if it does not openly invite, multiple resolutions and accompanying petitions aimed at the same township with no pretense other than that the motive is piece by piece, non-balloted capture of valuable parts of that township. And here we take a respectful issue with our Michigan Supreme Court when it says:

> The motive or purpose of the city or township in drawing the proposed boundaries or in requesting a revision of boundaries is not material.
>
> —*Midland Township v. Boundary Commission* at 679.

No authority for this extraordinary doctrine, which is dramatically opposed to *Gomillion*, in the context of the right of equal suffrage, is cited or suggested. We think there is none to be found or hinted in the post-*Baker v. Carr* 369 U.S. 186 (1962), decisions of the Court to which this brief is addressed.

Third: It may be that this Court may some day rule that a statute as in *Weber,* limiting its scope to less than 12 and guarding it against abuse and inequity by permitting direct trial access to the Courts, is *de minimis* within Fourteenth Amendment equal protection. Be that as it may, Section 9 is no such statute. A mere reading of subsections (2), (4) and (7) thereof will show that its very purpose was invidious discrimination, effected by permitting unilateral voting on one side of the frontier, and by denying it on the other.

Fourth: By repetitious allusions in the opinion appealed from, the Justices seemed to have been dispositively absorbed by observations that "the annexation question is essentially political, and political considerations cannot be avoided" (at 669; 88a); that "Resolution of a controverted annexation unavoidably involves political considerations and the exercise of a large measure of discretion." (at 673; 92a); that Section 9 "poses considerable risk of drawing the judiciary into the resolution of what continues to be—despite the adoption of the administrative format—essentially a political question." (at 674; 93a),[8] and finally this (at 674; 93a):

---

[8]

Until handing down last October of the decision below, it has as we believe been widely assumed that the presence of a duly submitted "political question" no longer does or should deter the courts from deciding it on merit or demerit, and that the judiciary should not shy away from such questions by leaving them largely to bureaucratic decisions reached by politically appointed commissions. *Gomillion* at 347, and *Baker v. Carr,* 369 U.S. 186 (1962), by "II" at 198, "III" at 205, and "IV" at 208, have led the way in such regard. As written in *Gomillion* at 347:

> "In sum, Mr. Justice Holmes remarked, when dealing with a related question, in *Nixon v. Herndon,* 273 U.S. 536, 540: 'Of course the petition concerns political action', but 'the objection that the subject matter of the suit is political is little more than a play on words' ".

> No vested right or legally protected interest being involved, the judiciary ought to be especially circumspect in reviewing commission rulings and determinations.
>
> —at 674, 93a.

(The go-ahead hint of this last directive could hardly be missed by the Boundary Commission. Indeed, it is understandable that the Commission, by its doings, has aggressively guarded the cities from those "venal abuses," on the part of a "few persons" or "a small group" [at 667; 86a], which visibly concern the Court.)

Our purpose in submitting this quotational analysis of the Court's opinion is not that of questioning the prerogative of the Michigan Supreme Court in construing and applying Section 9. We recognize cheerfully that exclusive judicial function. Rather, we offer the analysis only to show (a) that Michigan, quite unlike California as shown by *Weber,* provides no plenary access to her trial courts for remedy and protection against invidious or purposefully malignant manipulation of this particular annexation statute; and (b) that California's carefully limited "less than 12 persons" class, dealt with in *Weber,* is no authority for holding that Michigan's "100 or fewer" classification sustains the burden of the Appellees to show a compelling state need for such an extreme if not corrupt statute.

In Michigan, under the procedures act mentioned (MCLA 24.201 *et seq.*), the right of access to the circuit (trial) court is "confined to the record" by section 104(3), subject only to section 105's permission to seek on circuit court review, for "good reasons," an order for the taking of "additional evidence." But even that, if granted, returns the parties to the administrative tribunal for the additional evidence, and for an additional evaluation of the whole record by the tribunal and entry as

may be indicated of a new order. In a word, our circuit courts have no power except that of review of legal questions, and are denied as in California the authority to proceed to full hearing and to entry of an independent new judgment.

One of the California cases cited in *Weber's* lengthy footnote make it clear that if "fraud was perpetrated in the matter of the boundaries or the extent of the annexed district", a remedy therefor is available in the superior (trial) court, citing *People ex rel Peck v. City of Los Angeles,* 154 Cal. 220, 97 P. 311, 313. The case, thus cited by *Weber,* is *City of Anaheim v. City of Fullerton,* 102 Cal. App. 2d. 395, 227 P. 2d. 494 (1951).

California then, does provide adequate safeguards against venality, no matter whether the annexor or annexee is the perpetrator thereof. Michigan does not.

III.

THE SINISTER CLASSIFICATIONS WHICH SECTION 9 HAS LICENSED IN ARRAY WITH THE PRINCIPLES ESTABLISHED AT THE VERY BEGINNING BY REYNOLDS V. SIMS.

A. *Section 9 Can Permit The Progressive Destruction of Townships.*

Division II of *Reynolds* (377 U.S. at 554, *et seq.*) opened the Court's discussion of these principles. At 555 and 556 Chief Justice Warren observed that the right of suffrage "can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

Then by appended footnote 29, the Chief Justice elevated the 1950 dissent of Justices Douglas and Black, against summary affirmance of *South v. Peters,* 339 US 276, 279, to the level of respected authority, quoting it as follows:

> There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted . . . It also includes the right to have the vote counted at full value without dilution or discount . . . That federally protected right suffers substantial dilution . . . [where a] favored group [h] as full voting strength . . . [and] the groups not in favor have their votes discounted.
>
> *Reynolds, supra* at 555

Then the Chief Justice proceeded on page 563 to add these words which we think are of special significance:

> Weighing the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seem justifiable. One must be ever aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination."
>
> —*Id.*, at 528

In our Section 9 setting the common right of voice in annexation matters, of the electors of a Home Rule City, is truly representative. The City Council is elected to represent the people of the city and act independently in their behalf. The city electors' right of suffrage is thus guaranteed by representation to the high standard of equal protection.

The electors of the city, by that representation, have voted for each Section 9(7)(a) resolution which the Council and City

Manager have drawn up to avoid the more than 100 persons class, always retaining some semblance of contiguity no matter how physically "uncouth" (yes, from *Gomillion* at 340) the latter might have to be.[9] This follows because the city is become a true municipal corporation. (Sec. 1. Each organized city shall be a body corporate, MCLA §117.1).

But the *opposite* is true of Michigan townships. There it is the *inhabitants* that make up the body corporate,[10] and their elected representatives consisting of the township board of trustees (7 in number) have only such legislative powers as the State legislature has chosen to supply. So the discriminatory assault of section 9 is aimed directly, not alone at the township at large, but at the inhabitant electors thereof, class by class to destroy separately their hitherto known right to vote for or against annexation petitions.

The point made here is that the government of a Home Rule City is based upon a charter the electors themselves have

---

[9]

One such resolution and petition, now at issue before the Boundary Commission, pales by comparison the critical shape of that which, in Massachusetts 117 years ago, Governor Gerry's legislature drew up and enacted. It would annex an approximate square mile of a long north-south fractional township, cutting it but leaving a *small* but *more* than 100 residential area of the township hemmed-in by the city on 3 sides, with no direct access to the rest of the township and with the fourth side blocked physically by the multiple main line tracks of an international railroad (Canadian National-GTRR, connecting Chicago with Toronto and Montreal), plus those of another through and paralleling railroad, the Chesapeake and Ohio.

[10]

Since 1846 section 2 of the Michigan Township Law has provided (MCLA §41.2):

> The inhabitants of each organized township shall be a body corporate, . . .

adopted, subject only to such statutes as may modify or extend that charter; that those electors are represented for all governmental purposes by their elected councilmen, and that they have vested with the City Council the right and power to proceed legislatively just as State legislators do on behalf of their constituents.

In the township, however, the status of the people is different. They either have the right to vote as before in accordance with constitutional legislation, or they have been unconstitutionally classed out of rightful voice in the determination of annexational proceedings that are sure to affect them, adversely or prosperously. The discrimination favoring city voters over township voters, the subject being annexation by the city of township territory, with no voice permitted the township inhabitants, is evident.

All this says nothing of the specific classes of township residents which section 9 designates for separate treatment. One (less than 100) is culled out for sentence to city government where, unlike the close-to-the-people government of a township, intrigue and corruption find their devious ways less difficult. The other is that group of township residents, *more* than 100 in number, that finds itself surrounded or nearly so by callous gerrymandering, and yet is *excluded* from the annexational process by the fact that ***their greater number has eliminated them from the scope of the resolution and petition the annexers have filed,*** a process that usually leaves them on an island or peninsula of township territory.

There can be little doubt that section 9's permissible classifications, if left intact, will permit the appellee Commission, with discretion limited only by that ever-elastic adjective "rea-

sonable", to progressively dismember and ultimately gut city-adjacent townships.[11]

B. *The Classification Cases Cited by Appellees are Not Applicable.*

McGowan v. Maryland, 366 US 420 (1961) is relied upon by the Michigan Attorney General (P. 7 of Brief) and Novi (P. 28 of Brief) as precedent for the classification of 100 or less in Michigan Home Rule, Sec. 9, referred to above. *McGowan* has no such precedential value.

McGowan, as part of Marylands' blue laws, simply classified some *commercial* activities as prohibited and others permitted on Sunday. The Court did not overrule such classification.

McGowan did not involve the fundamental constitutional right of voting—a constitutional "suspect classification" demanding a "compelling state interest" and "strict scrutiny" by this court for any constitutionally permitted limitation as contracted to commercial blue laws that do not involve a constitutional right or suspect classification referred in *Kramer v. Union Free School District No. 15*, 395 US 621 (1969) and the myriad of other voting rights cases.

The other "classification' cases cited by Novi (P. 28 of Brief) are equally inapplicable.

---

[11]

To this situation it would seem that the conclusion of the court, in *Truax v. Corrigan*, 257 US 312, 336, is directly applicable:

> "If this is not a denial of the equal protection of the laws, then it is hard to conceive what would be. To hold it not to be, would be, to use the expression of Mr. Justice Brewer in *Gulf, Colorado & Santa Fe R. Co. v. Ellis*, 165 US 150, 154 to make the guaranty of the equality clause 'a rope of sand.'"

1. *Village of Belle Terre v. Boraas*, 416 US 161 (1974).

This Court upheld a classification in a zoning ordinance distinguishing it from fundamental voting rights cases by stating:

> It [the zoning ordinance] involves no fundamental right guaranteed by the constitution such as voting, *Harper v. Virginia Board*, 383 US 663 . . .

2. *Atlanta Bowling Center, Inc. v. Allen*, 389 F2d, 713 C 5 CA (1968).

In this case, a bowling alley claimed a denial of equal protection when it was denied a license to sell liquor by the glass in their Boom Boom Room. No claim was ever made that this was a constitutionally protected right or a suspect classification. It is no precedent for granting some citizens the right to petition and vote on annexation, and deny it to others, as in the present case before this Court.

3. *Alkire v. Carlsman*, 350 F. Supp. 360, *aff'd* memo 377 F. 2d. 480 (1972).

An Ohio statute required cities over 5,000 to fluoridate water. Complaints claimed classification was a denial of equal protection. This was a health statute under the police power of the state—not a "suspect classification". The Court upheld it saying:

> There is no federal constitutional requirement that a state exercise its police powers to the fullest extent, at any given time . . .
>
> —*Id.*, at 364.

The Court further reasoned such classification would:

> . . . reach an optimum number of citizens, at the least possible cost, utilizing the greatest efficiences of scale.
>
> —*Id.*, at 364.

A legislative classification not involving constitutional right.

4. *Adams v. City of Colorado Springs*, 308 F. Supp. 1397, 399 U.S. 901, 400 U.S. 855 (1970), page 29 Novi Brief.

The United States District Court upheld a geographical classification for annexation stating:

> Greater or lesser contiguity with a municipality is about the *only reasonable test* for the legislature to provide for unilateral annexation.
>
> —*Id.*, at 1404.
> Emphasis added.

Thus, *Adams* is not precedent for the case since it applies only to geography, in fact, by inference is precedent *against* appellees, since the case at bar involves people, not acreage.

5. *Thompson v. Whitley*, 344 F. Supp. 480 (1972).

The lower court failed to use the "strict scrutiny" test in the factual situation of limiting certain persons voting rights on annexation.

6. *Murphy v. Kansas City, Missouri*, 347 F. Supp. 837 (1972).

This case misapplied *Hunter* by stating:

> Thus, neither the *Cipriano* nor the *Kramer* case is applicable to limit the power of the State of Missouri or the City of Kansas City regarding the annexations proceedings as declared in *Hunter*.
>
> —*Id.*, at 841.

7. *Doyle v. Municipal Commission of the City of Minnesota*, 349 F. Supp. 841 (1972).

This case did not involve permitting some to petition and vote on annexations and denying such right to others, and so is factually different from the case at bar.

8. *Forks v. City of Warren*, 273 N.E. 2d. 856 (1971).

The facts were different than the case at bar, since there was no classification of some getting to vote depending on population of area to be annexed. The Court failed to apply "strict scrutiny".

9. *City of Monticello v. Adams*, 200 N.W. 2d. 622 (1972).

The Court misapplied *Hunter*, at page 524.

The factual situation differed in that the annexing city in *Monticello* showed it could provide substantial services to annexed territory of water, sewage, fire and police protection, garbage collection, etc. (page 523) and could arguably be an exercise of police power *not factually shown* in the case at bar, *nor required to be shown by Michigan annexation laws.* (Section 9).

C. ***In Arguendo, Even if "Strict Scrutiny", "Fundamental Rights", and "Compelling State Interest are Not the Applicable Standards, Section 9 Still Does Not Meet the Reasonable Classification Test.***

Appellees cite *ad infinitum* cases upholding "reasonable classification" as opposed to "strict scrutiny."

The drawing of the line to deny voting rights to people in the area to be annexed, the balance of the township, and the city at 100 residents is *not* reasonable.

Admittedly, there are many situations where the legislature *does* draw a line that may seem arbitrary but in fact and law is reasonable. In civil law, a line for the age of majority may be drawn at 18 or 21. Yet, everyone knows of a 16-year-old who is more mature than a particular 60-year-old. A speed limit of 40 miles an hour does not ignore the fact that some drivers at 30 miles an hour are more dangerous than others at 50 miles an hour.

IN THESE, AND MYRIADS OF OTHER CASES WHERE A LINE IS DRAWN, THE INDIVIDUAL DOES *NOT* HAVE ANY EFFECT ON WHERE THE LINE IS DRAWN.

IN THIS CASE, THE CITY WANTING TO ANNEX PART OF A TOWNSHIP CAN MANIPULATE "THE LINE" SO AS TO CAUSE MISCHIEF AND THE CONSTITUTIONAL DEPRIVATION OF THE RIGHT TO VOTE TO RESIDENTS, BOTH OF THE TOWNSHIP AND THE CITY.

As shown on page 93 of the Jurisdictional Statement, *all* 23 resolutions for annexation filed in 1978 *after* the Michigan Supreme Court decision in this matter were for areas of 100 or less residents!

Thus, the "drawing of this line" at 100 or less results in cities utilizing that option 100 percent of the time denying citizens the right to vote on referenda.

A city, by carving out units of a township at 100 or less per annexation, can in a piecemeal fashion annex *all* the valuable tax base of a township, leaving only an area where residents need vital government services but can't afford them. (This amounts to cutting a dog's tail off an inch at a time until the dog is decapitated).

In fact, certain township have been so gerrymandered that they are not even a contiguous whole. See, for example, Lansing Township in Ingham County, Michigan, consisting of 7 unconnected parcels.

Following are examples of the classifications established by Michigan law:

1. A petition for annexation of all or part of a township may be filed by a resolution of the annexing city, MCLA 117.9(7)(a) Appendix 170a. *But no provision is made for a township or village governing body to propose annexation of a city in whole or in part.*

2. If an annexation resolution or petition is filed and the area to be annexed is 100 or less, there can be no referendum petition filed by one and the action of the Michigan Boundary Commission is final subject only to possible and limited judicial review. MCLA 117.9(4), Appendix 169a.

3. If the area approved by the Boundary Commission for annexation contains over 100 persons, a referendum may be filed by obtaining signatures of 25% of the registered voters in any one of the following classifications:

(a) the area to be annexed, *or*

(b) the annexing city, *or*

(c) the balance of the township to be annexed.

4. If the referendum is held, it can be defeated by a negative majority in any one of the three following categories:

(a) the area to be annexed, *or*

(b) the annexing city, *or*

(c) the balance of the township to be annexed.

Thus, the right to petition for a referendum and vote on same is granted each of these categories (residents of area to be annexed, of annexing city, *and* balance of township) and annexation must be approved by a majority in each of the three categories to be effective, *if there are 100 or more in the area to be annexed.* MCLA 117.9(5), Appendix 169a.

If there are 100 or less in the area approved by the Boundary Commission for annexation, *there can be no referendum by any of three named categories.* MCLA 117.9(4), Appendix 169a.

The practical effects of these discriminatory provisions are as follows:

1. *The 100-or-less resident class.* This is the favorite of the cities, for it forecloses parcel by parcel all right of suffrage in a township and is jurisdictionally invocable by means of the cities' authority to select *ex parte* the target class by drawing lines on a township map and preparing a legal description, both for attachment to the cities' upcoming petition to the Boundary Commission.

The city may draw these lines anywhere it chooses over and about the map, just so long as a two feet or more of contiguity

with a city boundary is maintained, and less than the permitted 100-or-less residents live in the chosen enclosure.

So it may easily be seen that class designated by section 9 as "100 persons or less" is a crafty misnomer. That class can be safely enlarged by the marauding city to, say 1000 residents, simply by drawing each of ten or eleven simultaneous or rapid fire resolutions and petitions, with successive contiguity maintained, so that each set includes 100 persons or less in residence.

2. Section 9 openly authorizes the filing of each resolution and petition, one pair after the preceding pair and so on, always maintaining some minute or substantial point or points of contiguity, so that the desirable parts and portions of adjacent townships are confiscated with nary a voice allowed the township's inhabitants, or any of them, by resort to the voting booth, and with the undesirable or poor remaining portions of the township left fragmented, sometimes actually separated, and helpless for financial reasons to maintain any fair semblance of township government.

IV.

THE DEVELOPMENT OF THE LAW ON VOTING RIGHTS SINCE *HUNTER* WAS DECIDED IN 1907 PROHIBITS A CLASSIFICATION BASED ON POPULATION.

A. *Chronology of State of the Law on Voting Rights Under the Equal Protection Clause.*

The following chronology highlights the growth of the law on voting rights under the Equal Protection Clause of the Fourteenth Amendment.

1. *1907-Hunter v. Pittsburgh, 207 U.S. 161.* The question of Equal Protection was not even raised because it was accepted by all parties that the Equal Protection Clause did not apply.

2. *1946-Colegrove v. Green, 328 U.S. 549.* In *Colegrove,* the Illinois legislature—itself badly malapportioned—established congressional districts within the State of Illinois that were also badly apportioned.

Justice Frankfurter wrote for the majority stating that the relief sought was 'beyond its [the Court's] competence to grant". (Page 552). Justice Frankfurter, in dicta, further stated:

> "Courts ought not to enter this political thicket."
>
> —*Id.,* page 556.

Justice Black, in a dissent joined by Justices Douglas and Murphy, prohetically state in reference to the malapportioned Illinois Congressional Districts:

> "The Equal Protection Clause of the Fourteenth Amendment forbids such discrimination."
>
> —*Id.,* Page 569.

3. *1967-Gomillion v. Lightfoot, 364 U.S.* 339. The State of Alabama redefined the boundaries of Tuskegee to exclude all but four or five Negro voters from the city but not exclude a single white.

Justice Frankfurter wrote the opinion for an unanimous court, declaring such state action unconstitutional. He relied on the Fifteenth, not the Fourteenth Amendment. He severely limited his opinion in *Hunter* by saying:

> To exalt this (state power to establish local boundaries) power into an absolute is to misconceive the reach and rule of the Court's decisions in the leading case of *Hunter v. Pittsburgh,* 207 U.S. 161, 52L. Ed. 151, 28 S.Ct. 40, and related cases relied upon by respondents.
>
> *Id.,* at 342.

Justice Frankfurter reversed his "political thicket" dicta of *Colegrove* by affirmatively quoting Mr. Justice Holmes:

> Of course the petition concerns political action; but the objective that the subject matter of the suit is political is little more than a play on words.
>
> —*Id.,* at 347.

4. *1962-Baker v. Carr, 369 U.S. 186. Baker v. Carr,* so well known to this Court, established the principle that the Equal Protection Clause applies to state legislative districts and the lack of equality is a justiciable issue. Justice Frankfurter, who wrote the majority opinion in *Colgrove* deny relief for malapportionment, was consistent in *Baker,* where his vigorous opinion was that of a dissenting minority. Thus, the law evolves and grows.

The setting of *standards* for equality was left to *Reynolds v. Sims,* cited next.

5. *1964-Reynolds v. Sims, 377 U.S.* 533. The Court stated in no uncertain terms:

> Diluting the weight of votes because of *place of residence* impairs basic constitutional rights under the Fourteenth Amendment just as much as insidious discriminations based upon factors such as race, *Brown* v *Board of*

> *Education,* 347 US 483 . . ., or economic status, *Griffin v Illinois,* 351 US 12 . . ., *Douglas* v *California,* 372 US 353 . . .
>
> —*Id.,* at 566.
> Emphasis Added.

In this case, the right to vote is diluted 100 percent to the point it is non-existent.

A person in an area proposed for annexation of more than 100 residents has an absolute right to petition and vote on a referendum, *as do those in the balance of the township and the annexing city.*

If 100 or less reside in the area to be annexed, none has the right to petition or vote on a referendum.

If a person lives in a city, that city council can petition for annexation of part of a township. If a person lives in a township, that person's local government cannot petition to annex a portion of a city.

Residency determines (1) whether a voter's local government can initiate annexation and (2) whether a voter can initiate a petition for referendum and (3) whether a voter can vote on an annexation referendum.

All these limitations based on residency are violative of the Equal Protection Clause.

The Court also said in *Reynolds*:

> One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination'.
>
> *Id.,* at 563.

The Michigan Boundary Commission, no matter how artfully drawn cannot, in a sophisticated fashion, indirectly deny the right to vote that cannot directly be denied.

The United States Constitution does not prevent a state legislature from establishing local boundaries on a reasonable basis by a legislature based on one-man, one-vote. The Equal Protection Clause *does* prohibit granting some persons a vote but denying it to others based on residency.

Admittedly, a state legislature could divide a state into *all* counties, *all* cities, or *all* townships or even provide for legislation *only* by the state legislature with *no* local government —and still not violate the United States Constitution.

What the state *cannot* do is establish local units of government and let *only* women vote, only property owners vote, only Latinos vote, only people living on the south side of the street but not the north side, or only those in units to be annexed of over 100 residents.

6. *1969-Ciprianc* v. *Houma, 395 U.S. 701.* In this case, the question was raised whether an otherwise qualified voter who paid no property taxes could be precluded from voting on a municipal bond issue. This court applied the Equal Protection Clause to such an election by holding:

> As we noted in Kramer, supra, if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others,[4] "the Court must determine whether the exclusions are necessary to promote a compelling state interest." Kramer v Union Free School District No. 15, supra, at 627, 23 L Ed 2d at 589.
>
> —*Id.,* at 704.

7. *1977-Lockport v. Citizens for Community Action, 430 U.S. 259.* The State of New York passed a statute that permitted a new county charter to go into effect *only* if approved by a majority of each of the city and non-city voters.

This Court held such a "dual box" voting system did not violate the Equal Protection Clause.

This is a similar situation that applies under Michigan law if the area for proposed annexation *exceeds* 100. (MCLA 117.9[5]). There must be a majority vote of approval by (1) the city, (2) the part of the township to be annexed, and (3) the balance of the township, if a referendum is held. This is a "triple box" rather than the "double box" of *Lockport*.

SUMMARY OF PRESENT STATE OF THE LAW

The current state of the law is that the Equal Protection Clause prohibits discrimination on the basis of residency for all elections including referenda, unless such discrimination is shown as necessary under the strict scrutiny test for a compelling state interest.

The Michigan Court did not interpret *Hunter* or other cases correctly, ignored *Gomillion* and *Lockport*, and failed to apply the "strict scrutiny" and "necessary for compelling state interest" tests.

B. ***The Michigan Court further erred where it applied only the "reasonable relation" and "appropriate means" test to meet the Equal Protection Clause, not the "strict scrutiny" test.***

> We are of the opinion that the challenged classification bears a substantial relation to the object of the legislation[24] providing a means appropriate to the resolution of disagreements concerning annexation of territory to a city.[25]

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[24] *Manistee Bank & Trust Co v McGowan*, 394 Mich 655, 668; 232 NW2d 636 (1975).

[25] In so holding we do not reach the city contention that the Equal Protection Clause does not apply to an annexation.

> —*Midland Township v. Boundary Commission*, 401 Mich. 641, 666-67 (1977)
> Appendix 85a-86a

Footnote 25 is particularly revealing in that the double negative shows the court considered the Equal Protection Clause applicable but simply misapplied it by failing to use the strict scrutiny standard.

The bland statement of the court is simply a conclusion with no basis in fact, as in *Weber*, cited above.

V.

THIS COURT HAS JURISDICTION OF THIS MATTER

The Michigan Supreme Court in its opinion in this matter stated:

> A. *EQUAL PROTECTION*
>
> In the instant annexations fewer than 100 persons resided in the territories to be annexed.
>
> The townships and individual plaintiffs, acknowledging the principles enunciated in *Hunter*, assert that while the

Legislature may provide for annexation without an election is it violative of the *Equal Protection Clause* to provide for a referendum where more than 100 persons reside in the territory to be annexed and deny a referendum where 100 persons or fewer reside in the territory.

—*Midland Township v. Boundary Commission,* 401 Mich. 641, 666
Appendix 85a
Emphasis added.

Thus, the Michigan Court, by its heading "A. EQUAL PROTECTION" and the capitalized "Equal Protection Clause," was clearly referring to the Fourteenth Amendment of the United States Constitution, allegations of Appellee Novi to the contrary, notwithstanding.

The Attorney General, attorney for the Boundary Commission Appellee under Michigan's Constitution, did not even raise the questions of jurisdiction, and Appellee Novi, which was a permissive intervenor and not the principal defendant, must accept the case as presented by the principal party and cannot raise defenses which the primary defendant has conceded.

The Attorney General in the brief in opposition to application for a stay in this Court stated, at page 2:

> The issues addressed by the Michigan Supreme Court included, among other things, whether there had been a violation of the equal protection clause of the federal constitution by providing for a referendum where more than 100 persons reside in the territory to be annexed and denying a referendum where 100 persons reside in the territory.

The federal question was also considered in the Attorney General's brief in support of their motion to dismiss or affirm:

> The Michigan Supreme Court unanimously upheld the authority of the State Boundary Commission and found that the contentions of the townships pertaining to alleged violation of the Federal Constitution, state constitution, and state law were without merit. Specifically, the Michigan Supreme Court, after careful examination of federal case law, concluded that there had been no violation of the equal protection guarantees afforded by the Fourteenth Amendment to the United States Constitution and stated:

—Motion to Dismiss or Affirm, Attorney General of Michigan, p 3.

In *arguendo,* if there is any ambiguity, which Appellants deny, we would argue that this Court's edicts in *Herb v. Pitcairn,* 324 U.S. 117 (1944) must be observed. Therein, this Court said that even though it would not normally review judgments of state courts that rested on adequate and independent state grounds, it would not follow that this Court would refuse to protect its jurisdiction when given reasonable grounds to believe it exists. In fact, this Court said:

> . . . In proper cases we will impose the duty of applying for it [review of a federal question] upon petitioner or appellants on our own motion.

—*Id.*, at 128.

Importantly, Mr. Justice Black, in his dissent, which was concurred in by the three remaining Justices, Justices Douglas, Murphy and Rutledge, argued that there was no question but that a federal issue had necessarily been involved before the state court and that the U.S. Supreme Court should, therefore, accept jurisdiction without further judicial delays.

The similarity of the Equal Protection Clauses of both the federal and state constitutions is apparent by a reading of the language of each, which follows:

> No person shall be denied the equal protection of the laws . . .
>
> —Mich. Const. 1963, art. 1, §2.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*
>
> —U.S. Const. Am XIV
> Emphasis added.

Appellee Novi must be aware that to avoid the merits of the issue will only force some townships in the immediate future to raise the federal equal protection issue, if in ***arguendo,*** it is not ruled on now since there are a plethera of "100-or-less" annexations underway and since this was not a class action, each and every annexation of "100-or-less" can result in litigation based on the Fourteenth Amendment Equal Protection Clause one or more of which would end up in this Court, with the identical constitutional issue that is now before this Court.

Delay can only result in judicial and political mischief.

RELIEF

WHEREFORE, this Court is asked to:

Deny the Motions to Dismiss or Affirm;

Accept jurisdiction in this matter and decide *sua sponte* in favor of Appellants, or grant the appeal;

In the alternative, remand this matter to the Michigan Supreme Court with the order that Court review *Hunter* in view of *Gomillion* and these pleadings.

Respectfully submitted,

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April 17, 1978.

TOWNSHIP OF NOVI,

Appellant,

and

W. B. CHASE AND CHASE MANOR FARMS, INC., a Michigan corporation, and MARY ANN ODERMAN,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE BOUNDARY COMMISSION,

and

CITY OF NOVI, a municipal corporation,

Appellee

and

GREGORY I. DONOVAN, et al.,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

(Continued on back cover)

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

Appellee,

and

CITY OF BRIGHTON, a Michigan municipal corporation, GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.

TOWNSHIP OF BRIGHTON, a municipal corporation in Livingston County, Michigan, and MURIEL BEURMANN,

Appellants,

v

MICHIGAN STATE BOUNDARY COMMISSION,

and

CITY OF BRIGHTON, a Michigan municipal corporation,

Appellee,

and

GROUP BUILDING COMPANY, a Michigan corporation, TRAVELIER, INC., a Michigan corporation, MACATI INVESTMENT COMPANY, a Michigan corporation,

Intervening Defendants.